Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FREDERICK T. BRADY and MURTY S. POLAVARAPU

Appeal No. 2003-1208
Application 09/590,805

ON BRIEF

Before THOMAS, OWENS and GROSS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from final rejection of claims 1-7 and 22-25, which are all of the claims pending in the application.

THE INVENTION

The appellants claim an integrated circuit comprising two devices,[1] one of which has an effective threshold voltage which

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[1] The appellants' specification states that "[f]or the purposes of this specification, a 'device' is defined as a transistor (i.e., both the operating transistor and a parasitic transistor, if one exists) and the surrounding materials (*e.g.*, the field oxide, the gate dielectric, *etc.*) that affect the

is more susceptible than that of the other to being lowered by ionizing radiation. Claim 1 is illustrative:

1. An integrated circuit comprising:

a first device comprising a first lead, a second lead, and a third lead, wherein said third lead of said first is electrically connected to ground; and

a second device comprising a first lead, a second lead, and a third lead, wherein said third lead of said second device is electrically connected to ground, and wherein said first lead of said second device is electrically connected to said first lead of said first device;

wherein the effective threshold voltage of said first device is more susceptible to be lowered by ionizing radiation than is the effective threshold voltage of said second device.

THE REFERENCES

Tursky et al. (Tursky)	5,294,843	Mar. 15, 1994
Kalnitsky	5,589,708	Dec. 31, 1996
Murdock et al. (Murdock)	5,748,412	May 5, 1998

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1, 2, 4-7 and 22-25 over Kalnitsky or Murdock, in view of the appellants' admitted prior art, and claim 3 over Kalnitsky or Murdock, in view of the appellants' admitted prior art and Tursky.

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operating parameters (*e.g.*, the effective threshold voltage, V_T, *etc.*) of the transistor" (page 7, line 29 - page 8, line 2).

OPINION

The rejection of claims 1, 2, 4-7 and 22-25 over Kalnitsky in view of the appellants' admitted prior art is affirmed as to claims 1, 2, 4, 5 and 7, procedurally reversed as to claim 6, and reversed as to claims 22-25. The rejection of claim 3 over Kalnitsky in view of the appellants' admitted prior art and Tursky is reversed. The rejection of claims 1, 2, 4-7 and 22-25 over Murdock in view of the appellants' admitted prior art, and the rejection of claim 3 over Murdock in view of the appellants' admitted prior art and Tursky, are reversed. Under the provisions of 37 CFR § 1.196(b) we enter new grounds of rejection of claim 6.

The appellants state that the claims stand or fall in the following groups: 1) claims 1 and 2; 2) claim 3; 3) claims 4 and 5; 4) claims 6 and 7; 5) claims 22 and 25; 6) claims 23 and 24 (brief, pages 4-5). We therefore limit our discussion of the affirmed rejections to one claim in each relevant group, i.e., claims 1, 5 and 7. *See In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7)(1997). As for the reversed rejections, we need to address only the independent claims, i.e., claims 1 and 22, and dependent claims 3 and 6.

Rejection of claims 1, 2, 4-7 and 22-25 over Kalnitsky in view of the appellants' admitted prior art

Claim 1

Kalnitsky discloses an integrated circuit having thereon two transistors (col. 3, lines 32-34). It is undisputed that each of the transistors necessarily has three leads, one of which is connected directly or indirectly to ground.[2] One of the transistors (which corresponds to the appellants' first device) is a standard transistor and the other transistor (which corresponds to the appellants' second device) is a radiation-hard (i.e., increased radiation resistance) transistor (col. 3, lines 32-37).[3,4] Due to their difference in radiation sensitivity, the two transistors degrade or recover from ionizing radiation at different rates (col. 3, lines 37-39). After the two transistors have been formed on the integrated circuit,

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[2] The appellants' claim 1 does not require that the third leads of the first and second devices are electrically connected directly to ground.

[3] The radiation hard transistor is rendered resistant to radiation by implanting it with silicon ions that function as electron traps (col. 2, line 58 - col. 3, line 7).

[4] There is no dispute as to whether the effective threshold voltage of Kalnitsky's standard transistor is more susceptible to being lowered by ionizing radiation than is the effective threshold voltage of Kalnitsky's radiation-hard transistor.

> [a] sensor located on the chip could then determine the difference between the two types of transistors and sense the accumulated dose of radiation. A "self adapting" circuit could be used to compensate for the loss of performance due to the ionizing radiation. For example, a substrate biasing circuit composed of the two types of transistors could be used to sense the different degradation characteristics of the transistors and a differential signal could then be used to adjust for the radiation-induced loss of performance. [col. 3, lines 39-47]

The disclosures that 1) the sensor is on the chip (i.e., the integrated circuit), 2) the sensor determines the difference between the degradation characteristics of the two types of transistors, and 3) a differential signal based upon that difference is used to adjust for the radiation-induced loss of performance of the standard transistor, would have indicated to one of ordinary skill in the art that the transistors are electrically connected in parallel with a common input (i.e., first leads electrically connected as required by the appellants' claim 1) such that the difference in radiation-induced degradation characteristics is sensed and the differential signal based upon that difference is generated.

For the above reasons, Kalnitsky would have rendered the integrated circuit claimed in the appellants' claim 1 *prima facie* obvious to one of ordinary skill in the art.[5]

The appellants argue that their fabrication procedure produces a dose-soft (reduced radiation resistance) transistor, whereas Kalnitsky produces a dose-hard (enhanced radiation resistance) transistor (brief, page 7). This argument is not well taken because the appellants' claim 1 does not require that the first device is dose soft. What the claim requires is that the first device is more susceptible than the second device to ionizing radiation. This claim requirement can be met by a standard first device and a dose-hard second device such as Kalnitsky's silicon ion-implanted transistor.

The appellants argue (reply brief, page 4) that

> in Kalnitsky, the hot lead of a radiation-hard transistor and the hot lead of a radiation-soft transistor cannot be connected to one another. If they were connected, then the sensor could not sense any difference between the two types of transistors. Note Kalnitsky's language concerning "a differential signal." Essentially, Kalnitsky is disclosing attaching the two different transistors to a differential amplifier. Clearly, two transistors that are connected to a differential amplifier are not electrically connected to one another.

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[5] We consider the appellants' admitted prior art to be cumulative.

This argument is not persuasive because the difference in radiation-induced degradation characteristics can be sensed if the transistors are electrically connected in parallel. Even if Kalnitsky's device for generating a differential signal (col. 3, line 46) is a differential amplifier as argued by the appellants, such a differential amplifier has two input leads.[6] Each of these two leads necessarily is capable of being connected to an output lead from each of two transistors electrically connected in parallel.

For the above reasons we conclude that the *prima facie* case of obviousness of the integrated circuit claimed in the appellants' claim 1 has not been effectively rebutted by the appellants. Accordingly, we affirm the rejection of claim 1 and claim 2 that stands or falls therewith.

Claim 5

The appellants' claim 5, which depends from claim 1, requires that the integrated circuit further comprises an arrangement of memory cells operatively coupled to an address decoder. The appellants merely assert that this claim feature is

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[6] *See McGraw-Hill Electronics Dictionary* 146 (McGraw-Hill, 5th ed. 1994), a copy of which is provided to the appellants with this decision.

not disclosed or suggested by Kalnitsky or the admitted prior art (brief, page 11).

Kalnitsky's structure for determining the effect of radiation on integrated circuits is broadly applicable to integrated circuits generally. Hence, Kalnitsky would have fairly suggested, to one of ordinary skill in the art, forming the structure on any integrated circuit containing conventional structures such as memory cells operatively coupled to an address decoder. We therefore affirm the rejection of claim 5 and claim 4 that stands or falls therewith.

Claim 6

The appellants' claim 6, which depends from claim 1, requires that "said second lead of said first device is connected to ground,[7] said first lead of said first device is connected to power, and said first lead of said second device is connected to power."

The appellants' original claim 6 required that "said second lead of said first device is connected to ground, said third lead of said first device is connected to power, and said third lead

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[7] Both the first lead, as recited in claim 1, and the second lead, as recited in claim 6 which depends therefrom, are connected to ground.

of said second device is connected to power." The claim, which was inconsistent with claim 1 which required that the third lead of each device was electrically connected to ground, was changed to its present form in the amendment filed February 12, 2002 (paper, no. 7, page 2). The wording of original claim 6 is the same as that of the description of the relevant embodiment in the appellants' specification (page 5, lines 23-25).

The appellants' original disclosure does not disclose an integrated circuit in which the second and third leads of the first device are connected to ground and the first leads of the first and second devices are connected to power. The original disclosure, therefore, indicates that the integrated circuit claimed in the present claim 6 is not subject matter which the appellants regard as their invention. Consequently, we do not reach the issue of whether this subject matter would have been obvious to one of ordinary skill in the art.

Accordingly, we procedurally reverse the obviousness rejection of claim 6. We emphasize that this is not a reversal on the merits.

Claim 7

The appellants' claim 7, which depends from claim 1, requires that the first device shorts power to ground when the device has been exposed to ionizing radiation. The appellants argue that Kalnitsky and the admitted prior art do not disclose or suggest that two devices having different radiation susceptibility should be connected in the manner recited in claim 7 (brief, page 12).

Kalnitsky's standard transistor, because it is more sensitive to radiation than the radiation hard transistor, necessarily shorts power to ground when exposed to sufficient ionizing radiation. Hence, we affirm the rejection of claim 7.

Claim 22

Independent claim 22 requires a safeguard device and a utile device. The safeguard device is one which is designed to interrupt the functioning of all or part of an integrated circuit when the integrated circuit is exposed to ionizing radiation, thereby completely or partially destroying the functionality of the integrated circuit (specification, page 8, line 29 - page 9, line 2). The utile device is "a device that processes an information-bearing signal" (specification, page 8, lines 3-4).

The examiner argues that although Kalnitsky does not explicitly state that upon exposure to a sufficient amount of ionizing radiation a first device turns on before a second device and thus affects operation of the second device, these features are inherent in Kalnitsky because Kalnitsky's hard device turns on after the regular device, and when one device turns on, it naturally affects the operation of a second device connected thereto (answer, page 7).

The appellants' claim 22 requires that when the integrated circuit is exposed to a sufficient amount of radiation, the safeguard device turns on before the utile device. Kalnitsky discloses the reverse of this requirement. Kalnitsky's transistor which is radiation unhardened corresponds to the appellants' utile device and, when the integrated circuit is exposed to a sufficient amount of radiation, turns on before the radiation-hard transistor. Kalnitsky's radiation-hard transistor, therefore, is not a safeguard device. Kalnitsky's radiation-unhardened transistor cannot be a safeguard device, as that term is defined by the appellants, because it is not "designed to interrupt the functioning of all or part of an integrated circuit when the integrated circuit is exposed to ionizing radiation" (specification, page 8, lines 30-31).

Instead, Kalnitsky's radiation-unhardened transistor is designed to carry out the function of the integrated circuit.

The examiner argues that it would have been obvious to one of ordinary skill in the art to use in Kalnitsky's integrated circuit a second device as a utile device and a first device as a safeguard device in order to use the utile device in an application which requires circuit protection (answer, page 8).

For a *prima facie* case of obviousness to be established, the teachings from the prior art itself must appear to have suggested the claimed subject matter to one of ordinary skill in the art. *See In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). The mere fact that the prior art could be modified as proposed by the examiner is not sufficient to establish a *prima facie* case of obviousness. *See In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

The examiner's proposed modification of Kalnitsky requires that Kalnitsky's radiation-hard transistor, which is used to measure the radiation-induced degradation of the radiation-unhardened transistor, be replaced by a radiation-soft transistor that protects the radiation-unhardened transistor against the effects of radiation. The examiner has not explained why

Kalnitsky's disclosure of the use of a radiation-hard transistor would have led one of ordinary skill in the art to make this modification.

The admitted prior art relied upon by the examiner is a disclosure of two electrically connected devices, each of which has three leads (answer, pages 5-6). The examiner does not rely upon the admitted prior art for any disclosure which would have led one of ordinary skill in the art to replace Kalnitsky's radiation-hard transistor with a radiation-soft transistor.

The record, therefore, indicates that the motivation for modifying Kalnitsky so as to arrive at the integrated circuit claimed in the appellants' claim 22 comes from the appellants' disclosure rather than coming from Kalnitsky. Consequently, the record indicates that the examiner used impermissible hindsight in rejecting the appellants' claim 22 over Kalnitsky in view of the admitted prior art. *See W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *In re Rothermel*, 276 F.2d 393, 396, 125 USPQ 328, 331 (CCPA 1960). Accordingly, we reverse the rejection over Kalnitsky in view of the admitted prior art of claim 22 and claims 23-25 that depend therefrom.

Rejection of claim 3 over Kalnitsky in view of the appellants' admitted prior art and Tursky

The appellants' claim 3, which depends from claim 1, requires that "said first device comprises a field oxide that has been implanted with a material that traps positive charge when said first device is exposed to ionizing radiation and said second device has not been implanted with said material."

Tursky discloses "a freewheeling diode device for a switchable device component including a commutator branch" (col. 1, lines 6-8). Tursky teaches that "[a] freewheeling diode is essentially a rectifier diode connected across an inductive load to carry a current resulting from the energy stored in the inductance when no power is being supplied by the source to the load and until all the energy in the inductance has been dissipated or until the next voltage" (col. 1, lines 38-43). The freewheeling diode device includes, in parallel, a first diode (12) having soft recovery behavior and a second diode (14) having snappy switching behavior (col. 3, lines 39-48; col. 4, lines 56-60; col. 6, lines 7-9). Each diode has n^+, n^- and p zones between metallization zones (col. 8, lines 7-33; figures 9 and 10).

The examiner argues (answer, page 9):

> Tursky et al. teach forming a first device with a field oxide that has been implanted with a material that traps positive charge when the first device is exposed to ionizing radiation and the second device has not been implanted with the material (column 9, lines 31-51). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form a first device with a field oxide that has been implanted with a material that traps positive charge in prior art's device, in order to obtain a soft diode with a well known alternative method.

The portion of Tursky relied upon by the examiner teaches that the diode soft recovery behavior can be obtained by irradiation with protons. This portion does not, however, say anything about field oxide or ionizing radiation. Nor does it disclose that the protons trap positive charge, and the examiner has not provided evidence or technical reasoning which shows that the protons trap positive charge. Also, the examiner has not established that this portion of Tursky would have indicated, to one of ordinary skill in the art, a correlation between soft recovery behavior of a diode and resistance of a transistor to ionizing radiation. Moreover, even if Tursky's protons trap positive charge, the examiner has not explained why one of ordinary skill in the art would have been led by the applied prior art to substitute those protons for Kalnitsky's silicon ions that trap negative charge rather than positive charge (col. 2, line 67 - col. 3, line 3).

The examiner has not explained how the admitted prior art remedies the above-discussed deficiency in Kalnitsky and Tursky.

We therefore reverse the rejection of claim 3 over Kalnitsky in view of the admitted prior art and Tursky.

Rejection of claims 1, 2, 4-7 and 22-25 over Murdock in view of the appellants' admitted prior art

Claim 1

Murdock discloses a method and an apparatus for preventing damage to a magnetoresistive sensor element (34) of a magnetoresistive head assembly (28) caused by electrostatic discharge (col. 1, lines 12-15). The head is electrically connected to detection circuitry (16) via electrical conductors (18a and 18b) (col. 3, lines 60-64). A diode assembly (30) electrically connects the conductors (col. 5, lines 44-45). When the electrical potential or voltage across the magnetoresistive sensor element and between the conductors exceeds a selected voltage protection threshold in either direction, the diode assembly shorts current between the conductors away from the magnetoresistive sensor element to electrically short electrostatic discharge current pulses away from the magnetoresistive sensor element (col. 6, lines 53-60). Murdock teaches that soft diodes which may conduct at less than the

operating voltage of the magnetoresistive sensor element can be produced by doping thermally-deposited polysilicon, and that the voltage at which the diodes conduct can be raised by using a plurality of them in series or by laser recrystallizing the polysilicon before it is doped (col. 10, lines 26-45).

The examiner argues that "Murdock et al. teach in figure 2 and related text an integrated circuit comprising a first device 30c (figure 3c) and a second device 34 (column 10, lines 26-29) electrically connected to one another (figure 2c) wherein the effective threshold voltage of the first device 30c is more susceptible to be lowered by ionizing radiation than is the effective threshold voltage of the second device 34 (column 10, lines 26-45)" (answer, page 5).

Murdock's component 30c is a circuit configuration for a diode assembly (30), comprising two pluralities of diodes (70 and 72) connected in parallel across electrical conductors (18a and 18b) and between a magnetoresistive sensor element (34) and detection circuitry (16) (col. 7, lines 6-18; figure 3c). Thus, Murdock's 30c and 34 cannot be first and second devices as argued by the examiner because component 34 is part of circuit configuration 30c. Also, Murdock's circuit configuration 30c and magnetoresistive sensor element 34 are not devices, as that term

is used by the appellants, because the appellants' devices are transistors (specification, page 7, line 29). Murdock's diodes themselves cannot be the appellants' devices for the additional reason that diodes have only two leads whereas, although the appellants' claim 1 does not specify to what the second leads of the devices are attached, the claim requires that the devices have three leads. Additionally, contrary to the examiner's argument, the portion of Murdock relied upon by the examiner says nothing about ionizing radiation. Murdock's teaching is that doping the diodes causes them to conduct at a lower voltage than the magnetoresistive sensor element (col. 10, lines 26-29). The examiner has not provided evidence or technical reasoning which shows that Murdock's doping of the diodes causes the diodes to be more sensitive than the magnetoresistive sensor element to ionizing radiation.

The examiner argues that interpreting the appellants' term "device" as meaning "transistor" requires reading a limitation from the specification into the claims (answer, page 11). This argument is not well taken because a patent specification "acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication", *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1577

(Fed. Cir. 1996), and the appellants' specification defines a "device" as "a transistor (i.e., both the operating transistor and a parasitic transistor, if one exists) and the surrounding materials (*e.g.*, the field oxide, the gate dielectric, *etc.*) that affect the operating parameters (*e.g.*, the effective threshold voltage, V_T, *etc.*) of the transistor" (page 7, line 29 - page 8, line 2). Thus, the term "device" in the appellants' claim 1 does not encompass Murdock's diode assembly or magnetoresistive sensor element.

The above-discussed deficiency in Murdock is not remedied by the admitted prior art disclosure relied upon by the examiner of first and second devices having three leads (answer, page 5).

For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the integrated circuit claimed in the appellants' claim 1. We therefore reverse the rejection over Murdock in view of the admitted prior art of this claim and claims 2-7 that depend therefrom.[8]

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[8] Although we are not able to reach the merits of the rejection of claim 6 over Kalnitsky in view of the admitted prior art due to failure of this claim to comply with 35 U.S.C. § 112, second paragraph, we are able to reverse the rejection of claim 6 over Murdock in view of the admitted prior art because claim 6 depends from claim 1 and the rejection of claim 1 over Murdock in

Claim 3

Because the examiner does not rely upon Tursky for any disclosure that remedies the above-discussed deficiency in Murdock and the admitted prior art as to claim 1 from which claim 3 depends, we reverse the rejection of claim 3 over Murdock in view of the admitted prior art and Tursky.

Claim 22

The examiner argues that although Murdock and the admitted prior art do not explicitly state that upon exposure to a sufficient amount of ionizing radiation a first device turns on before a second device and thus affects operation of the second device, these features are inherent in Murdock because soft devices turn on before regular devices, and hard devices turn on after regular devices, and when one device turns on, it naturally affects the operation of a second device connected thereto (answer, page 7).

As discussed above regarding the rejection of claim 1 over Murdock in view of the admitted prior art, Murdock's soft diodes conduct at a lower voltage than the magnetoresistive sensor element, and Murdock says nothing about the effect of ionizing

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view of the admitted prior art is reversed.

radiation. The examiner has not established that Murdock's doping of the diodes to lower the voltage at which they conduct electricity renders them more susceptible to ionizing radiation. Also, as discussed above regarding claim 1, Murdock's diode assembly circuit configuration and magnetoresistive sensor element which the examiner relies upon as being, respectively, the appellants' safeguard device and utile device, are not devices as that term is used by the appellants, and Murdock's diodes do not have the required three leads. The admitted prior art which shows first and second devices having three leads does not remedy these deficiencies in Murdock' disclosure of diodes and a magnetoresistive sensor element.

Accordingly, we reverse the rejection over Murdock in view of the admitted prior art of claim 22 and claims 23-25 which depend therefrom.

New grounds of rejection

Claim 6 is rejected under 35 U.S.C. § 112, second paragraph, as failing to claim subject matter which the appellants regard as their invention.

As discussed above regarding the rejection of claim 6 over Kalnitsky in view of the admitted prior art, the appellants' original disclosure does not disclose an integrated circuit in

which the second and third leads of the first device are connected to ground and the first leads of the first and second devices are connected to power. The original disclosure, therefore, indicates that the integrated circuit claimed in the present claim 6 is not subject matter which the appellants regard as their invention. Accordingly, claim 6 is rejected under 35 U.S.C. § 112, second paragraph.

Claim 6 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

The appellants' original claim 6 required that "said second lead of said first device is connected to ground, said third lead of said first device is connected to power, and said third lead of said second device is connected to power." This wording is the same as that of the description of the relevant embodiment in the appellants' specification (page 5, lines 23-25). Hence, the appellants' original disclosure does not indicate that the appellants were in possession of the integrated circuit claimed in present claim 6 wherein the second and third leads of the first device are connected to ground and the first leads of the

first and second devices are connected to power. Claim 6, therefore, is rejected under 35 U.S.C. § 112, written description requirement.

DECISION

The rejection of claims 1, 2, 4-7 and 22-25 over Kalnitsky in view of the appellants' admitted prior art is affirmed as to claims 1, 2, 4, 5 and 7, procedurally reversed as to claim 6, and reversed as to claims 22-25. The rejection of claim 3 over Kalnitsky in view of the appellants' admitted prior art and Tursky is reversed. The rejection of claims 1, 2, 4-7 and 22-25 over Murdock in view of the appellants' admitted prior art, and the rejection of claim 3 over Murdock in view of the appellants' admitted prior art and Tursky, are reversed. Under the provisions of 37 CFR § 1.196(b), new grounds of rejection of claim 6 have been entered.

In addition to affirming the examiner's rejection of one or more claims, this decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b)(amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides, "A new ground of rejection shall not be considered final for purposes of judicial review."

Regarding any affirmed rejection, 37 CFR § 1.197(b) provides:

> (b) Appellant may file a single request for rehearing within two months from the date of the original decision . . . .

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

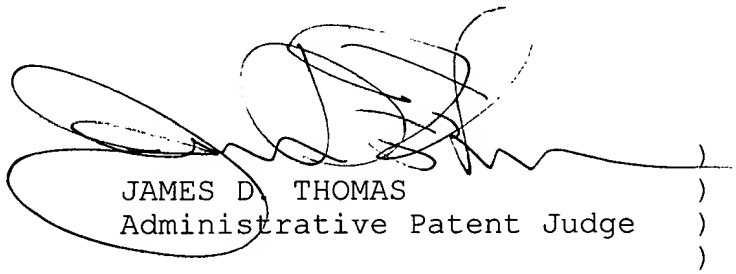
> (1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .
>
> (2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

Should the appellants elect to prosecute further before the Primary Examiner pursuant to 37 CFR § 1.196(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellants elect prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART, 37 CFR § 1.196(b)



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Appeal No. 2003-1208
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